# Evolution of the ERC Tax Credit

## Confused about the Employee Retention Credit (ERC)? You're not alone


The IRS has made a series of changes to ERC since its inception and the complexity of those changes combined with little guidance from the agency itself has got small businesses across the country scratching their heads.

Do you qualify? What is the process? What documents do you need? Help! You may be feeling all of that and more. At ERC Specialists, we're here to help you navigate the CARES Act ERC process and make it easy to claim the tax credits you deserve. Our team of dedicated tax experts are the key to enabling you to get the funding you need quickly.

## Let's take a look at the evolution of the ERC Tax Credit

### March 2020

The ERC is passed under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), part of the government relief program, to reward business owners for retaining employees throughout the COVID-19 pandemic. Business owners who have been impacted by COVID-19 can claim this refundable tax credit for each W-2 employee retained from March 12, 2020 through December 31, 2020.

At this time, business owners who accepted Paycheck Protection Program funds were not eligible.

### December 2020

The Taxpayer Certainty and Disaster Tax Relief Act of 2020 amended and extended the Employee Retention Credit under the CARES Act, including modifying and extending the Employee Retention Credit (ERC) for six months through June 30, 2021.

As a result of the new legislation, eligible employers can now claim a refundable tax credit against the employer share of Social Security tax equal to 70 percent of the qualified wages they pay to employees after December 31, 2020, through June 30, 2021.

## January 2021

**The IRS issued guidance indicating employers are eligible for ERC if they operate a business during January 1 through June 30, 2021, and:**

- Experience either a full or partial suspension of the operations of their business during this period because of governmental orders due to COVID-19 or;
- Experience a decline in gross receipts in a calendar quarter in 2021 where the gross receipts are less than 80 percent of the gross receipts in the same calendar quarter in 2019. In addition, to be eligible based on a decline in gross receipts in 2020, the gross receipts are required to be less than 50 percent of the previous year's quarter.

**The definition of qualified wages was also changed to provide for the following:**

- Employers who averaged more than 500 full-time employees in 2019 - qualified wages are defined as wages paid to employees that are not providing services because operations were fully or partially suspended or due to the decline in gross receipts.
- Employers that averaged 500 or fewer full-time employees in 2019 - qualified wages are defined as wages paid to all employees during a period that operations were fully or partially suspended or during the quarter that the employer had a decline in gross receipts regardless of whether the employees are providing services.

## March - April 2021

The IRS issues several notices during these two months that are worth looking at as they change and clarify previous notices and guidance. These notices are referred to as Notice 2021-20, Notice 2021-23 and Notice 2021-24.

Probably most importantly for business owners, Notice 2021-20 provides new guidance that allows employers who received a PPP loan to be eligible for the ERC tax credit retroactively to March 2020. The notice also provides new requirements to substantiate employer claims.

Notice 2021-23 provides guidance on how to appropriately document the necessary decline in gross receipts as well as other changes, which include an expansion of eligible employers, non-profits and colleges/universities as well as the definition of qualified wages.

In April, Notice 2021-24 extends the penalty relief previously indicated if a failure to deposit employment taxes resulted from a reasonable anticipation of ERC funding.
The America Rescue Plan (ARP) expands and extends the ERC through Dec. 31, 2021. It also allows for some severely affected businesses to claim credit for a greater share of employee wages. Additionally, ARP expands the credit to include startups and new businesses formed after Feb. 15, 2020, as long as their revenue is below $1 million.

## November 2021

The Infrastructure Investment and Jobs Act, signed into law Nov. 15, 2021, has ended the availability of the Employee Retention Credit (ERC) for the entire fourth quarter of 2021 for most employers. "Recovery startup businesses" – businesses that began operations after Feb. 15, 2020, and for which average annual gross receipts do not exceed $1 million for the three-taxable-year period immediately preceding the calendar quarter for which the credit is determined – can continue to claim ERCs for the fourth quarter (limited to $50,000 for the entire quarter).